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March 3, 2006

VIA FACSIMILE

The Honorable Sidney H. Stein
United States District Court
500 Pearl Street, Room 1010
New York, NY 10007

MEMO ENDORSED

Re: Major Khan v. UBS Financial Services, Inc.
Index No.: 05 CV 4922

Dear Judge Stein:

This firm represents defendant UBS Financial Services Inc. ("Defendant" or "UBSFS") in the above-referenced matter. Earlier today we wrote pursuant to Local Civil Rule 37.2, asking your Honor to order Plaintiff to produce a surreptitiously made audiotape of a post-termination conversation between Plaintiff and one of Defendant's then management officials, Jay Tota. Thereafter, we received a letter from Plaintiff's counsel along with an accompanying affidavit (a copy is attached), indicating that Plaintiff's counsel, approximately seven weeks after receipt of Defendant's First Request For Production of Documents, to which this audiotape was clearly responsive, delivered the tape to an outside vendor without first making any copy thereof and the tape has now "disappeared." Plaintiff's counsel offered no explanation of why they ignored our three letters on this subject.

In light of this newly discovered information, Defendant now respectfully modifies its previous request and seeks a protective order prohibiting Plaintiff from questioning Mr. Tota at his scheduled deposition on February 23, 2006 about the conversation allegedly recorded on the audiotape, unless and until the audiotape is found and Defendant is given sufficient opportunity to examine it. To allow questioning of Mr. Tota about the allegedly recorded conversation under the current circumstances would be manifestly unfair to Defendant. If the tape is found and produced to Defendant, Mr. Tota's deposition can thereafter be reopened to allow Plaintiff to question him about the taped conversation.

Defendant also respectfully reserves its right to move at an appropriate time for preclusion of evidence and other applicable sanctions regarding this alleged conversation between Plaintiff and Mr. Tota.

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3/14/06
Def's request for a protective order prohibiting plt from questioning Mr. Tota about the conversation allegedly recorded on the audiotape is denied.
So ordered.
Sidney H. Stein
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Thank you again for your consideration.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Dorothy Rosensweig / EF".

Dorothy Rosensweig

Attachments

cc: Stephen Whinston, Esq., Counsel for Plaintiff (via facsimile, w/ enclosure)
Selim Ablo, Esq., Counsel for Plaintiff (via facsimile, w/ enclosure)
Brett Cebulash, Esq., Counsel for Plaintiff (via facsimile, w/ enclosure)